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ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

Nos. 1057, 1055, 1056, 1058, 1142, 1217, 1216, 23. Argued January 21, 1890. — Decided May 19, 1890.

The decisions *Hartman* v. *Greenhow*, 102 U. S. 672; *Antoni* v. *Greenhow*, 107 U. S. 769; *Virginia Coupon Cases*, 114 U. S. 269; *Barry* v. *Edmunds*, 116 U. S. 550; *Chaffin* v. *Taylor*, 116 U. S. 567; *Royall* v. *Virginia*, 116 U. S. 572; *Sands* v. *Edmunds*, 116 U. S. 585; *Royall* v. *Virginia*, 121 U. S. 102; *In re Ayers*, *In re Scott* and *In re McCabe*, 123 U. S. 443, are reviewed; and, without committing the court to all that has been said, or even all that has been adjudged in those cases, on the subject of the act of the legislature of Virginia of March 30, 1871, to provide for the funding and payment of the public debt, and the issue of coupon bonds of the State under its provisions, it is now *Held*,

(1) That the provisions of the act of 1871 constitute a contract between the State of Virginia and the lawful holders of the bonds and coupons issued under and in pursuance of said statute;

(2) That the various acts of the assembly of Virginia passed for the purpose of restraining the use of said coupons for the payment of taxes and other dues to the State, and imposing impediments and obstructions to that use, and to the proceedings instituted for

establishing their genuineness, do in many respects materially impair the obligation of that contract, and cannot be held to be valid or binding in so far as they have that effect;

(3) That no proceedings can be instituted by any holder of said bonds or coupons against the Commonwealth of Virginia, either directly by suit against the Commonwealth by name, or indirectly against her executive officers to control them in the exercise of their official functions as agents of the State;

(4) That any lawful holder of the tax-receivable coupons of the State issued under the act of 1871 or the subsequent act of 1879, who tenders such coupons in payment of taxes, debts, dues and demands due from him to the State, and continues to hold himself ready to tender the same in payment thereof, is entitled to be free from molestation in person or goods on account of such taxes, debts, dues or demands, and may vindicate such right in all lawful modes of redress — by suit to recover his property, by suit against the officer to recover damages for taking it, by injunction to prevent such taking where it would be attended with irremediable injury, or by a defence to a suit brought against him for his taxes or the other claims standing against him; that no conclusion short of this can be legitimately drawn from the series of decisions reviewed by the court without wholly overruling that rendered in the *Coupon Cases* and disregarding many of the rulings in other cases, which the court would be very reluctant to do; and that to this extent the court feels bound to yield to the authority of its prior decisions whatever may have been the former views of any member of the court.

In *McGahey* v. *Virginia*, *Bryan* v. *Virginia* and *Cooper* v. *Virginia* it is now *Held*,

(1) That the provision in the act of the General Assembly of Virginia of January 26, 1886, which imposes upon the taxpayer the duty of producing the bond from which the coupons tendered by him in payment of taxes were cut, at the time of offering the coupons in evidence in court, is an unreasonable condition, in many cases impossible to be performed, so onerous and impracticable as not only to affect, but to destroy the value of the instruments in the hands of the holder who had purchased them; and is repugnant to the Constitution of the United States;

(2) That the provision in the act of that Assembly of January 21, 1886, which prohibits expert testimony in establishing the genuineness of coupons so offered in evidence, is in like manner unconstitutional;

(3) That it is questionable whether the act of that assembly of May 8th, 1887, which authorizes and requires a suit to be brought against the taxpayer who tenders payment of his taxes in coupons, as well as the acts which require their rejection, are not laws impairing the obligation of the contract.

In *Ellett* v. *Virginia* it is *Held;* that in tendering coupons in payment of a

judgment recovered by the State for taxes and costs of suit the taxpayer is entitled to tender coupons in payment of the costs as well as of the taxes.

In *Cuthbert* v. *Virginia* it is *Held;* that the special license required by the act of March 15, 1884, as amended by the act of May 23, 1887, for the right to offer tax-receivable coupons for sale was a material interference with their negotiability, and impaired the contract.

In *Brown's Case* it is *Held;* that whether the passage of a new statute of limitations, giving a shorter time for the bringing of actions than had existed before, as applied to actions which had accrued, so affected the remedy as to impair the obligations of the contract, within the meaning of the Constitution, depends upon whether a reasonable time is given for bringing such actions; that no one rule can be laid down for determining, as to all cases alike, whether the time allowed was or was not reasonable; that that fact must depend upon the circumstances in each case; and that under the circumstances of this case, and the peculiar condition of the securities in question, the limitation prescribed by § 415 of the Code of Virginia of 1887, with regard to the obligations of the State is unreasonable and impairs the obligation of the contract.

In *Hucless* v. *Childrey* it is *Held;* that the requirement by the laws of Virginia that the tax for a license to sell, by retail, wine, spirits and other intoxicating liquors shall be paid in lawful money of the United States does not impair the obligation of the contract made by the State with the holders of the coupons of its bonds, that they shall be received in payment of taxes.

In *Vashon* v. *Greenhow* it is *Held*, that the statute of Virginia requiring the school tax to be paid in lawful money of the United States was valid, notwithstanding the provision of the act of 1871, and was not repugnant to the Constitution of the United States.

THESE cases, all of which grew out of the legislation of the State of Virginia regarding its tax-receivable coupons, were argued together; and, although having distinguishing features, it has been found by the court more convenient to treat them together in its opinion.

MR. JUSTICE BRADLEY, on behalf of the court, prefaced the cases in detail, by a general review of the previous action of the court in this matter. He said:

These cases, like the *Virginia Coupon Cases*, decided in April, 1885, and reported in 114 U. S. 269, and like *Barry* v. *Edmunds* and other cases argued at the same time, decided in February, 1886, and reported in 116 U. S. 550, etc., arise upon certain tax-receivable coupons attached to bonds of the State

of Virginia issued in reduction and liquidation of the state debt under the acts of March 30, 1871, and March 28, 1879. The present appeals are a continuation of the controversy arising upon said coupons as receivable and tendered in payment of taxes and other state dues.

The origin of these bonds and coupons has been fully explained in former cases; but the proper disposition of the cases now to be considered will be greatly facilitated by presenting a connected *résumé* of the legislative acts relating to and affecting the said securities, and of the decisions heretofore made in reference to said acts.

The state debt of Virginia amounted, prior to the late civil war, to more than thirty millions of dollars. After the war it became a matter of great importance to arrange this debt in such manner as to bring it within the control and means of the State. West Virginia had recently been separated from the parent State and had participated in the advantages of the money raised by the issue of the state securities. It was supposed by those who were best qualified to know the facts that at least one-third of the state resources was lost by this excision of territory, and the legislature of Virginia deemed it nothing more than equitable that the new State should bear one-third of the state debt. A proposition was therefore made to the bondholders of the State to receive two-thirds of the amount due them in new bonds payable thirty-four years after date, with coupons attached thereto receivable, after becoming due, in payment of taxes and other claims and demands due to the State. This scheme was formulated by the act of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt," and was acquiesced in by the public creditors, or the great majority of them, who accepted and received the bonds provided for in the act, which were looked upon as a favorite security in consequence of the value attached to the coupons as legal tender instruments in the payment of taxes and public dues. The act, amongst other things, provided as follows:

"SECTION 2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this State which are recog-

nized by its constitution and laws as legal" [except certain specific securities named] " may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon to the first day of July, 1871, in six per centum coupon or registered bonds of this State . . . to become due and payable in thirty-four years after date, but redeemable . . . after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer and the coupons to bearer, and registered bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues and demands due the State, which shall be expressed on their face. . . ."

Provision was made in the third section of the act for the issue of certificates for one-third part of the debt which was not funded in said bonds, the payment of which certificates it was declared would be provided for in accordance with such settlement as should thereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State existing at the time of its dismemberment.

By the fourth section the treasurer was authorized and directed to cause to be prepared engraved or lithographed, registered bonds and bonds with coupons, and certificates of the character mentioned in the second and third sections, and, when prepared, to commence the issuance of the same. It was further enacted that the bonds and certificates should be signed by the treasurer and countersigned by the auditor; that the coupons should be signed by the treasurer, or that a *fac simile* of his signature should be stamped or engraved thereon. The bonds were to be issued in series, and those of each series to be numbered from one upwards, as issued, and the coupons, in addition to the number of the bond to which they were attached, were to be numbered from one to sixty-seven. The surrendered bonds were to be cancelled and deposited in the office of the state treasurer.

Statement of the Case.

By section 5 certain assets belonging to the State, when realized or converted into money, were to be paid into the treasury to the credit of a sinking fund created for the purchase and redemption of the bonds issued under the act, and, after 1880, inclusive, a tax of two cents on a hundred dollars of the assessed valuation of all property in the State was to be applied in like manner. The treasurer, the auditor of public accounts and second auditor were appointed commissioners of the sinking fund.

It has always been contended on the part of the bondholders that this statute created a contract between them and the State, firm and inviolable, which the legislature had no constitutional right to violate or impair; and such was, for several years, the uniform holding of the Supreme Court of Appeals of Virginia. See *Antoni* v. *Wright*, 22 Grattan, 833, November term, 1872; *Wise* v. *Rogers*, 24 Grattan, 169; *Clarke* v. *Tyler*, 30 Grattan, 134. A different view, however, has since been taken by the Court of Appeals, which now holds that the act of 1871 was unconstitutional from its inception, being repugnant to certain provisions of the constitution of the State adopted in 1869. An elaborate argument to this effect is contained in the opinion of the court rendered in one of the cases now before us, *Vashon* v. *Greenhow*, decided January 14, 1886. In ordinary cases the decision of the highest court of a State with regard to the validity of one of its statutes would be binding upon this court; but where the question raised is whether a contract has or has not been made, the obligation of which is alleged to have been impaired by legislative action, it is the prerogative of this court, under the Constitution of the United States and the acts of Congress relating to writs of error to the judgments of state courts, to inquire, and judge for itself, with regard to the making of such contract, whatever may be the views or decisions of the state courts in relation thereto.

The decisions of this court, therefore, in reference to the question whether a valid contract was made by the statute in question between the State of Virginia and the holders of the bonds authorized by said act, are to be considered as binding

upon us, although a contrary view may have been taken by the courts of Virginia; and in view of this principle of constitutional law, and of the decisions made by this court, we have no hesitation in saying that the act of 1871 was a valid act, and that it did and does constitute a contract between the State and the holders of the bonds issued under it, and that the holders of the coupons of said bonds, whether still attached thereto or separated therefrom, are entitled, by a solemn engagement of the State, to use them in payment of state taxes and public dues. This was determined in *Hartman* v. *Greenhow*, 102 U. S. 672, decided in January, 1881; in *Antoni* v. *Greenhow*, 107 U. S. 769, decided in March, 1883; in the *Virginia Coupon Cases*, 114 U. S. 269, decided in April, 1885; and in all the cases on the subject that have come before this court for adjudication. This question, therefore, may be considered as foreclosed and no longer open for consideration. It may be laid down as undoubted law that the lawful owner of any such coupons has the right to tender the same after maturity in absolute payment of all taxes, debts, dues and demands due from him to the State. The only question of difficulty which can arise in any case is as to the mode of relief which the owner of such coupons is entitled to in case they are refused when properly tendered in making his payment, or, as to the cases which may be excepted from the operation of his right.

For, almost from the start, the legislature of Virginia has from time to time enacted various laws calculated to embarrass the holders of said coupons in the free use of them for the payment of taxes and other dues. As early as March, 1872, an act was passed prohibiting the officers charged by law with the collection of taxes from receiving in payment anything else than gold and silver coin, United States Treasury notes, and notes of the national banks, and repealing all other acts inconsistent therewith. This law was under consideration in the case of *Antoni* v. *Wright*, 22 Grattan, 833, before referred to, and the Supreme Court of Appeals of Virginia decided that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to

receive them in payment of taxes and state dues, and that the act of 1872, so far as it conflicted with this contract, was void.

In *Clarke* v. *Tyler*, 30 Grattan, 134, decided in 1878, it was said that this decision in *Antoni* v. *Wright* "must be held to be the settled law of this State."

By an act passed March 25, 1873, it was declared that every officer charged with the collection of taxes should deduct from the matured coupons which might be tendered to him in payment of taxes or other dues to the State, the tax upon the bonds from which the coupons were cut, which tax was declared to be fifty cents on the hundred dollars market value of said bonds. This law was repeated in the act of 1876, and bore oppressively upon the holders of the coupons, inasmuch as it compelled them to pay the tax due on bonds of which they were not the owners, and of the owners of which they had no knowledge. It was a clear impairment of the obligation of the contract with the holders of the coupons. The validity of this act came before this court for consideration in the case of *Hartman* v. *Greenhow*, 102 U. S. 672, 685, and it was held to be unconstitutional. Mr. Justice Field, speaking for the court in that case, said: "We are clear that this act of Virginia of 1876, requiring the tax on her bonds issued under the funding act of March 30, 1871, to be deducted from the coupons originally attached to them, when tendered in payment of taxes or other dues to the State, cannot be applied to coupons separated from the bonds and held by different owners, without impairing the contract with such bondholders contained in the funding act, and the contract with the bearer of the coupons."

By an act of the legislature of Virginia, approved on the 28th of March, 1879, another plan for the settlement of the public debt was promulgated. By the first section it was enacted, "That to provide for funding the debt of the State, the governor is hereby authorized to create bonds of the State, registered and coupon, dated the 1st day of January, 1879, the principal payable forty years thereafter, bearing interest at the rate of three *per cent per annum* for ten years, and at the

rate of four *per centum per annum* for twenty years, and at the rate of five *per centum per annum* for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the 1st days of July and January of each year, until the principal is redeemed." "The coupons on said bonds shall be receivable at and after maturity for all taxes, debts, dues and demands due the State, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the State a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable, etc. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the State or by any county or corporation therein, and this shall be expressed on the face of the bonds." "The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the State, as hereinafter provided." Bonds were issued under this act in conformity with its requirements, and some of the coupons thereon are the subject of controversy in one or more of the suits now before us for consideration. The questions relating to their receivability for taxes and other public dues, and to the validity of subsequent laws passed in derogation or obstruction thereof, are the same as those which arise under like circumstances upon the coupons of the bonds issued under the act of 1871.

At the session of the General Assembly held in 1882 still another scheme for funding and reducing the state debt was formulated by an act approved February 14 of that year, which specified the amount of each class of indebtedness supposed to be obligatory upon the State of Virginia in relation to the corresponding obligation of the State of West Virginia, and the rate of percentage at which new bonds were proposed to be issued to the public creditors according to the different classes of the debts. These new bonds were to be dated July 1, 1882, and payable July 1, 1932, with interest at three per cent per annum. The commissioners of the sinking fund were authorized to issue them either as registered or coupon bonds, but no security was proposed for the payment of the bonds or coupons except the pledged faith of the State. This

act was called "the Riddleberger act," and was declared to be the final proposition which the State would make to its creditors. Of course it was not to be expected that those who held bonds issued under the acts of 1871 or 1879, with coupons invested with the quality of legal tender for the payment of taxes and other public dues, would willingly surrender their bonds in exchange for the bonds to be issued under the Riddleberger act; and for the purpose apparently of creating motives to induce such bondholders to make the exchange, several ancillary bills were passed at the same session, calculated to discourage and hamper the use of the tax-paying coupons of 1871 and 1879. One of these bills, approved the 14th of January, 1882, (recited in full in 107 U. S. 771–774,) required that whenever any taxpayer should tender to any person whose duty it was to collect or receive taxes, debts or demands due the Commonwealth, any papers purporting to be coupons detached from bonds of the Commonwealth issued under the act of 1871, in payment of any such taxes, debts and demands, the person to whom such papers were tendered should receive the same, giving the party tendering a receipt stating that he had received the same for the purpose of identification and verification, but that he should at the same time require such taxpayer to pay his taxes in coin, legal-tender notes or national bank bills, and give him a receipt therefor. In case of his refusal to pay, the taxes should be collected as all other delinquent taxes were collected. The act then provided for a proceeding in the county court or hustings court of the city to ascertain whether the coupons tendered were genuine legal coupons receivable for dues or not. This proceeding was to be instituted by the petition of the taxpayer, and defended by the Commonwealth's attorney, and the matter was to be tried by jury. If the decision should be in favor of the taxpayer, the judgment was to be certified to the treasurer, who thereupon was required to receive the coupons for taxes and refund the money paid by the taxpayer out of the first money in the treasury. The law further provided that, if any taxpayer should apply for a mandamus to compel the collector to receive his coupons for taxes, a similar proceeding should take

place, for the purpose of ascertaining the identity and validity of the coupons, and when found to be genuine a mandamus might issue. The suggestion upon which this law was based, as recited in the preamble thereof, was, that many spurious, stolen and forged bonds were in circulation, which made it imprudent to receive coupons in payment of taxes without an investigation first had with regard to their genuineness and validity. It is apparent that such a cumbrous mode of proceeding was a very awkward substitute, so far as the taxpayer was concerned, for the reception of his coupons as so much money when presented.

Another act, approved on the 26th of January, 1882, provided that in case of proceedings instituted against a taxpayer for the collection of his tax, notwithstanding his tender of coupons in payment thereof, he should be authorized to pay the tax under protest, in lawful money, and might within thirty days thereafter sue the officer for the amount, and if it should be determined that it was wrongfully collected, the amount should be returned, and it was declared that no writ of injunction, supersedeas, mandamus, prohibition or other writ whatever should be issued to hinder or delay the collection of tax.

Another act, approved on the 7th of April, in the same year, changed the general law of mandamus to coincide with the provisions of the act of January 26th.

The validity of these acts came before this court for consideration in the case of *Antoni* v. *Greenhow*, and the question in that case was whether they so far affected the remedy of the holder of coupons as to impair the obligation of the contract made by the State to receive them for taxes and other dues. This was the general question presented, although it is true that the particular question in that case was, whether the proceeding by mandamus to compel the acceptance of the coupons in payment of taxes and other dues was unconstitutionally obstructed. The case was instituted by Antoni, a taxpayer, by a petition to the Supreme Court of Appeals of Virginia for a mandamus against Greenhow, the treasurer of the city of Richmond, to compel him to accept a coupon ten-

dered by the petitioner in part payment of his taxes. The treasurer answered that he was ready to receive the coupon as soon as it had been legally ascertained to be genuine and by law receivable, referring, of course, to the law as it then stood, prescribing the special proceedings before mentioned for ascertaining the genuineness and validity of coupons. To this answer a demurrer was filed. Upon the hearing the court was equally divided on the questions involved, and denied the writ. The judgment was brought by writ of error to this court, and the precise question was, whether the acts of 1882 unconstitutionally impeded the remedy by mandamus. The court, in discussing the question, discussed the general effect of the said statutes, and came to the conclusion that they did not interpose any material obstructions to the proceeding, so as to be obnoxious to the charge of impairing the obligation of the contract.

Under all the obstacles with which the holders of coupons now had to contend in utilizing those instruments in the payment of taxes and public dues, (the only way in which any satisfaction thereof could be obtained,) they still succeeded in disposing of many of them, and more stringent legislation was finally resorted to for the evident purpose of suppressing their use altogether. In the session of 1884 several acts of the General Assembly were passed to this end. By an act approved March 12, 1884, it was made the duty of the attorneys for the Commonwealth to defend the suits brought by taxpayers, and, if decided against the Commonwealth, to carry the case to the higher courts by appeal; to defend all suits brought in the federal courts; and to carry judgments against the Commonwealth or the collector of taxes by appeal to the Supreme Court of the United States. An act approved March 13, 1884, declared that no action of trespass or on the case should be brought or maintained against any collecting officer, for levying upon the property of any taxpayer who had tendered in payment, in whole or in part, any coupons cut from bonds of the State for such taxes, and who should refuse to pay his taxes in gold, silver, United States treasury notes or national bank notes. Another act, approved on the 15th of

March, 1884, required all licenses to be paid in lawful money of the United States. Still another act, approved March 19, 1884, required that all coupons received for taxes, beyond what they would have been exchanged for under the Riddleberger act, should be charged to the bond from which they were clipped, as a payment on the principal of the bond. Finally, by the tax act, approved March 15, 1884, section 65, it was declared that no person should sell tax-receivable coupons from bonds of the State of Virginia without a special license, for which privilege he should pay one thousand dollars for each office or place of business kept for that purpose, and in addition thereto a tax of twenty *per centum* upon the face value of all tax-receivable coupons sold by him, and should give to the purchaser a certificate stating that he had sold such coupons to the purchaser, naming him and specifying the number and amount of the coupons and date of sale; and whenever such coupons should be tendered for taxes the broker's certificate should be delivered to the collector. This section was subsequently amended by an act passed May 23, 1887, so as to include in the prohibition not only the selling or offering to sell tax-receivable coupons, but the tendering, passing or offering to tender or pass for another any such coupons, without a special license therefor, and the license fee was made $1000 for the privilege of selling or offering to sell coupons in each county, city or town of over 10,000 inhabitants, and $500 for each county, city or town of under 10,000 inhabitants; and the privilege was confined to selling, tendering and passing such coupons to taxpayers residing, or owning property subject to tax, within the county, city or town in which the license was obtained, and it was declared that any person violating this provision should be deemed guilty of a misdemeanor, and upon conviction should be fined, at the discretion of a jury, not less than $500 nor more than $2000. Section 91 declared that every attorney-at-law should pay an annual license fee of fifteen dollars if under five years' practice, and twenty-five dollars if over five years' practice; but that no attorney thus licensed should be allowed to bring suit against the Commonwealth, or any treasurer or collector of

taxes, for the recovery of money for coupons tendered for taxes, unless he took out a special license therefor, for which privilege he should pay a specific license tax, in addition to the tax before required, of two hundred and fifty dollars.

In April, 1885, after the passage of these various acts, the *Virginia Coupon Cases* (so called) reported in 114 U. S. 269, etc., came before this court for consideration. There were eight of these cases. One of them, *Poindexter* v. *Greenhow*, the leading case in the report, was an action of detinue brought by Poindexter, a taxpayer, against Greenhow, treasurer of Richmond, for a desk of the plaintiff, of the value of thirty dollars, seized and taken by Greenhow on the 25th of April, 1883, for the purpose of raising the taxes due from the plaintiff after he had tendered coupons in payment thereof. Upon an agreed statement of facts, no dispute being raised as to the genuineness of the coupons, judgment was given in the hustings court of Richmond for the defendant, on the ground that the plaintiff should have paid his tax in lawful money and pursued the remedy pointed out in the acts of 1882. As this was the highest court in the State in which a decision in the case could be had, the judgment was brought by writ of error to the Supreme Court of the United States, and the question was now directly raised, whether the restraining acts passed by the legislature of Virginia were of such force and validity as to prevent the taxpayer from suing the collecting officer for taking his goods in satisfaction of taxes after a tender of coupons for the payment thereof, without adopting the proceedings required by the said acts. This court held that the acts were unconstitutional so far as they prohibited the collector or receiver of the taxes from accepting coupons issued under the act of 1871 in payment of taxes, according to the contract contained in said act, and imposed upon the taxpayer the circuitous and onerous proceeding of establishing the genuineness of his coupons in court; that the tender of the coupons was equivalent to the tender of legal money in payment of the tax, and exonerated the taxpayer from further molestation in respect thereof; and that, if he continued to hold himself in readiness to pay said tax in the coupons tendered, his

property could not lawfully be taken in satisfaction of the same.

The court distinguished this remedy of the taxpayer from that which was in question in the case of *Antoni* v. *Greenhow*, in that in the latter case the proceeding by mandamus alone was under consideration, and that form of proceeding for relief was held not to be materially obstructed by the acts of 1882; and it was held that nothing in the decision of that case concluded the rights of taxpayers and coupon holders in reference to other remedies which the law gave them for the unlawful seizure of their property in satisfaction of the tax, after having duly tendered coupons in payment thereof. Therefore, without expressly overruling the case of *Antoni* v. *Greenhow*, the court decided that the acts referred to were unconstitutional, so far as they had the effect of depriving the taxpayer of his remedy by detinue, or trespass, or case, or other proper action, for unlawful seizure of his goods after tendering tax-receivable coupons in payment of his taxes. The judgment of the hustings court was, therefore, reversed. The question was very fully and elaborately discussed by Mr. Justice Matthews in delivering the opinion of the court, although there was a dissenting opinion on the part of the Chief Justice and three of the Associate Justices.

Two other of the coupon cases, *White* v. *Greenhow* and *Chaffin* v. *Taylor*, were cases of trespass for taking the property of the taxpayers in payment of taxes after they had tendered coupons in payment thereof, and were in all substantial respects similar to the case of *Poindexter* v. *Greenhow*, and were decided in the same way. In one of them, *Chaffin* v. *Taylor*, the act of March 13, 1884, which expressly forbids an action of trespass or case against a collecting officer, was referred to and relied on by the defendant in the action.

A fourth case, that of *Baltimore & Ohio Railroad Co.* v. *Allen*, auditor of accounts of the State of Virginia, was a bill for injunction, filed in the Circuit Court of the United States, to prevent the defendant from seizing the cars and other personal property of the complainant in satisfaction of taxes alleged to be due, for the payment of which the railroad company had

tendered tax-paying coupons. An injunction was granted by the Circuit Court to prevent the seizure of the complainant's property, and the decree was affirmed by this court upon the same grounds which were taken in the case of *Poindexter* v. *Greenhow*.

The fifth case, *Carter* v. *Greenhow*, was an action brought in the Circuit Court of the United States, and founded upon section 1979 of the Revised Statutes of the United States, by which every person who, under color of any statute, etc., of any State or Territory, subjects a citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. The plaintiff in said action set forth that in May, 1883, he tendered certain tax-paying coupons of the State, in payment of taxes due from him, to the defendant Greenhow, treasurer of the city of Richmond, who refused to receive the same in payment, and unlawfully entered upon plaintiff's premises and seized and took certain property of the plaintiff to sell the same in payment of said taxes; that the plaintiff had a right under the Constitution of the United States to pay his said taxes in the coupons referred to, and the defendant refused to receive the same under the color of, and by the command of, the act of assembly of the State of Virginia, approved January 26, 1882, which forbids collectors of taxes due the State to receive in payment thereof, anything except gold, silver, etc.; and that he levied on said property under the command of the 18th section of another act of assembly, approved April 1, 1879, and of other statutes enacted by the General Assembly of the State of Virginia, which statutes he alleged to be repugnant to the Constitution of the United States and void. The amount of damages claimed in the action was less than five hundred dollars, and therefore it was not within the jurisdiction of the Circuit Court of the United States, unless it should be sustained by the section of the Revised Statutes referred to. Judgment was given for the defendant, and was affirmed by this court on the ground

that the case did not come within section 1979, because the right claimed was not one of the rights referred to in that section.

The sixth case, *Pleasants* v. *Greenhow*, was a bill for injunction, filed in the Circuit Court of the United States, to restrain the defendant Greenhow from levying on plaintiff's property for taxes after coupons were tendered therefor. The amount of taxes being less than five hundred dollars, relief was prayed for on the same ground of deprivation of rights, which was preferred as the cause of action in the case of *Carter* v. *Greenhow*. The bill was dismissed by the Circuit Court, and its decree was affirmed by this court for the same reason which prevailed in that case.

The seventh case was *Marye, Auditor of the State of Virginia* v. *Parsons*. Parsons, a citizen of New York, filed a bill in equity in the Circuit Court of the United States against Marye, Auditor of the Commonwealth of Virginia; Greenhow, Treasurer of the city of Richmond; Hill, Treasurer of the city of Norfolk; Dunnington, Treasurer of the city of Lynchburg; Munford, Commissioner of Revenue of Richmond; Price, Commissioner of Lynchburg; and Langley, Commissioner of Norfolk. He alleged that he was the owner of a large amount of coupons cut from bonds of Virginia, issued under the act of 1871, and receivable by that act in payment for taxes, debts and demands due the State, a list of which coupons was appended to the bill. He claimed that they constituted a contract with the State, and, after setting forth the laws which had been passed by the State of Virginia for preventing or interfering with the use of such coupons in the payment of taxes and other state dues, (which laws he alleged to be unconstitutional and void,) he prayed that the defendants, as officers of the State, might be compelled specifically to perform the contract of the State with regard to said coupons, and to receive them in payment of taxes and other dues, and that a mandatory injunction for that purpose might be issued. The defendant filed a demurrer, plea and answer to the bill, and a perpetual injunction, as prayed for, was awarded by the Circuit Court. The complainant did not allege that he owed

any taxes or other demands to the State of Virginia for which he had offered coupons in payment, but his ground of action was that the coupons held by him were valueless, so long as the officers of the State, in obedience to its laws, refused to receive such coupons in payment of taxes, and hence he sought the relief prayed for in his bill. This court reversed the decree of the Circuit Court, holding that the injury complained of was of an abstract nature, *damnum absque injuria*, and that the bill should have been dismissed on that ground; and that none but taxpayers, or those who are indebted to the State upon some other claim or demand, are in a position to complain of the refusal of the officers of the State to receive coupons in payment of such taxes and demands.

The remaining case was that of *Moore* v. *Greenhow*, being a petition for a mandamus to compel the defendant to receive coupons in payment of a license tax as a sample merchant, the petitioner not having pursued the course pointed out by the act of January 14, 1882, for establishing the genuineness of the coupons tendered by him. The petition was denied by the Circuit Court of Richmond, and its decision was affirmed in conformity with the conclusion arrived at in the case of *Antoni* v. *Greenhow*, that the act of January 14, 1882, as applicable to the remedy of mandamus, did not violate the Constitution of the United States.

Several other coupon cases came before this court in October term, 1885, and were decided in February, 1886. They were *Barry* v. *Edmunds*, 116 U. S. 550; *Chaffin* v. *Taylor*, 116 U. S. 567; *Royall* v. *Virginia*, 116 U. S. 572; and *Sands* v. *Edmunds*, 116 U. S. 585. These cases do little more than repeat the views of the court contained in the coupon cases decided in the previous year, except perhaps in deciding in the case of *Royall* v. *Virginia*, that the license tax of a practising lawyer was a tax within the meaning of the act of 1871, and payable in coupons attached to bonds issued under that act.

In another case, *Royall* v. *Virginia*, 121 U. S. 102, it appeared that an information was filed against Royall for practising as a lawyer without first having obtained a revenue license. He pleaded payment of the license fee, partly in a

coupon cut from a bond issued under the act of 1871 and partly in cash. The Commonwealth demurred to this plea, and it was held that the demurrer admitted that the coupon was genuine, and bore on its face the contract of the State to receive it in payment of taxes, etc., and that this showed a good tender, and brought the case within the ruling in *Royall* v. *Virginia*, 116 U. S. 572.

In the session of the General Assembly of Virginia of 1886, several additional acts were passed, all having for object the imposition of further obstructions and impediments in the way of using the tax-paying coupons. An enumeration of these acts, with a general indication of their purport, is all that is necessary to state. By the act of January 21, 1886, it was declared that expert evidence shall not be received of the genuineness of any paper or instrument made by machinery, or in any other manner than by the actual or personal handwriting of the party to be charged, or his agent. By the act of January 26, 1886, it was declared that in the trial of any issue involving the genuineness of a coupon purporting to have been cut from any bond authorized by law to be issued by the State, or by any city, county or corporation, the defendant may demand the production of the bond, and thereupon it shall be the duty of the plaintiff to produce such bond, with proof that the coupon was actually cut therefrom. On the same day another act was passed declaring that any person who shall solicit or induce any suit or action to be brought against the State of Virginia, or any citizen thereof, by verbal representations, or by writing or printing, shall be deemed guilty of the offence of champerty, and subject to fine and imprisonment. By the act of March 1, 1886, it was declared that any person licensed to practise law in Virginia who shall solicit or induce any suit or action to be brought against the State, or any citizen thereof, by verbal representations, or by writing or printing, shall be deemed guilty of barratry, and if found guilty it is made the duty of the court to revoke his license and disbar him forever from practising law in the Commonwealth. By an act of March 4, 1886, it was declared that all license fees required for the transaction of any business

in the State shall be paid in coin, legal-tender notes or national bank bills; and if coupons shall be tendered in payment thereof, they shall be received by the officer for identification by the proceedings prescribed in the act of 1882; but no license shall issue to the applicant, nor shall he have the right to conduct business or pursue his profession until said coupons have been verified in the manner prescribed by said act; and by another act, passed February 27, 1886, it was declared that after the 1st day of July, 1888, no petition shall be filed or other proceeding instituted to try the question whether any paper purporting to be a coupon detached from any bond of the State is genuine and legally receivable for taxes and other state dues, except within one year from said 1st day of July, 1888, if such coupon first became receivable prior to that time; and within one year from the time the coupon becomes receivable if it becomes receivable after that date. This law became incorporated in the code of 1887 as section 415. Finally as, according to the decisions of this court in 1885 and 1886, the collecting officers were liable to action for proceeding against the property of the taxpayers who had tendered coupons in payment of their taxes, on the 12th of May, 1887, an act was passed authorizing suits to be brought against such taxpayers for taxes due from them, which suits were to be in the name of the Commonwealth, and to be commenced by a notice served on the party liable for the tax, or on the agent of such party who may have tendered the coupons. If the defendant relies upon the tender of coupons as payment he shall plead the same specifically in writing, and file the coupons tendered with the clerk, and the burden of proving the tender and genuineness of the coupons shall be on the defendant. If established, the judgment shall be for the defendant on the plea of tender. If the defendant fail in his defence, there shall be judgment for the Commonwealth for the taxes due and interest and costs, and execution shall issue thereon as in other cases; and if judgment be against the defendant, a fee of ten dollars is allowed to the attorney for the Commonwealth as part of the costs in the case; but the Commonwealth is not to be liable for any fees or costs. The act is set forth in full in the case *In re Ayers*, 123 U. S. 451.

Since the passage of this act the cases *In re Ayers*, *In re Scott* and *In re McCabe*, 123 U. S. 443, have come before this court for consideration. They were decided in December, 1887. These cases came before us on applications for *habeas corpus*, directed to the marshal of the United States for the Eastern District of Virginia, who held the applicants, one of them the attorney general of Virginia, another the auditor of the State, and the third the Commonwealth's attorney for Loudoun County, who had been committed for contempt by the Circuit Court of the United States for disobedience to a restraining order. The case in which said order was made was this: James P. Cooper and others, subjects of Great Britain, filed their bill of complaint in the Circuit Court of the United States for the district aforesaid against Marye, auditor of the State of Virginia, Ayers, attorney general thereof, and the treasurers of counties, cities and towns in the State, and the Commonwealth's attorneys of counties, cities and towns therein; in which bill it was alleged, amongst other things, that the complainants, on the faith of the decisions of this court, that the State of Virginia could not impair the value of the coupons issued under the acts of 1871 and 1879 as a tender for taxes, had bought a large quantity of said coupons in open market in London and elsewhere, amounting to more than one hundred thousand dollars, for the purpose of selling said coupons to the taxpayers of Virginia, believing that they would be able to sell them at considerable advance. The bill then set forth the act of assembly of May 12, 1887, authorizing and requiring suits to be brought in the name of the Commonwealth against taxpayers who should have tendered coupons in payment of their taxes. It further alleged that this act is repugnant to the Constitution of the United States, for the reason that, taken in connection with the act of January 26, 1882, it first commands the State's officers to refuse to receive those coupons, and then commands them to bring suits against those who have tendered them, as well as against those who have tendered spurious coupons; that it imposes upon the defendants heavy costs and fees, etc. It further set out the provisions of various other acts before referred to, tending to

embarrass the holders of coupons in the use of the same, and in the proceedings for establishing their genuineness. The bill prayed that the defendants might be restrained and enjoined from bringing or commencing any suit provided for by the said act of May 12, 1887, or from doing any other act to put said statute into force and effect, and that until the hearing of a motion for said injunction a restraining order might be made to that effect. A restraining order was accordingly made by the court in pursuance of the prayer of the bill, and it was for disobedience to this order that the parties in the cases of Ayers, Scott and McCabe were committed for contempt. This court, after a very full and careful examination of the questions arising in the cases, decided that the suit of Cooper and others against Marye, Ayers and others, in which the said restraining order and order of commitment for contempt were made, was virtually and in effect a suit against the State of Virginia, and, therefore, in violation of the Eleventh Amendment of the Constitution of the United States, which declares that the judicial power of the United States, shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State; and the judgment of the court was that the Circuit Court had no jurisdiction to entertain said suit, and that its acts and proceedings were void; and the petitioners, Ayers, Scott and McCabe were discharged. The cases in which the question has been considered in this court as to when a proceeding against the officers of a State may be considered as a proceeding against the State itself, or only as a proceeding against the officers for a violation of a clear duty imposed upon them by law, were carefully reviewed and distinguished in the elaborate opinion of the court delivered by Mr. Justice Matthews, and may be referred to as throwing much additional light upon that vexed and interesting question; but it is particularly referred to here, in connection with the other cases cited, for the purpose of showing the conditions, circumstances and aspects in which the questions arising on these tax-paying coupons have presented themselves to the court.

Without committing ourselves to all that has been said, or even all that may have been adjudged, in the preceding cases that have come before the court on the subject, we think it clear that the following propositions have been established:

First, that the provisions of the act of 1871 constitute a contract between the State of Virginia and the lawful holders of the bonds and coupons issued under and in pursuance of said statute;

Second, that the various acts of the assembly of Virginia passed for the purpose of restraining the use of said coupons for the payment of taxes and other dues to the State, and imposing impediments and obstructions to that use, and to the proceedings instituted for establishing their genuineness, do in many respects materially impair the obligation of that contract, and cannot be held to be valid or binding in so far as they have that effect;

Third, that no proceedings can be instituted by any holder of said bonds or coupons against the Commonwealth of Virginia, either directly by suit against the Commonwealth by name, or indirectly against her executive officers to control them in the exercise of their official functions as agents of the State;

Fourth, that any lawful holder of the tax-receivable coupons of the State issued under the act of 1871 or the subsequent act of 1879, who tenders such coupons in payment of taxes, debts, dues and demands due from him to the State, and continues to hold himself ready to tender the same in payment thereof, is entitled to be free from molestation in person or goods on account of such taxes, debts, dues or demands, and may vindicate such right in all lawful modes of redress — by suit to recover his property, by suit against the officer to recover damages for taking it, by injunction to prevent such taking where it would be attended with irremediable injury, or by a defence to a suit brought against him for his taxes or the other claims standing against him. No conclusion short of this can be legitimately drawn from the series of decisions which we have above reviewed, without wholly overruling that rendered in the *Coupon Cases* and disregarding many of the rulings

in other cases, which we should be very reluctant to do. To the extent here announced we feel bound to yield to the authority of the prior decisions of this court, whatever may have been the former views of any member of the court.

There may be exceptional cases of taxes, debts, dues and demands due to the State which cannot be brought within the operation of the rights secured to the holders of the bonds and coupons issued under the acts of 1871 and 1879. When such cases occur they will have to be disposed of according to their own circumstances and conditions.

It was earnestly contended in the dissenting opinion in the *Coupon Cases*, that the defence of a tender of coupons set up by a taxpayer when prosecuted for the payment of his taxes, was in the nature of a set-off and could not be enforced against a State any more than a suit could be prosecuted against it; in other words, that a set-off is in reality a cross-suit and as such subject to the prohibition of the Eleventh Amendment. But the majority of the court held, and perhaps with better reason, that where a set-off or counter-claim is made by virtue of an agreement or contract between the parties, it no longer has the character of a mere set-off, but becomes attached to the primary claim as *pro tanto* a defeasance thereof. At all events, such was the decision of the court, and it is not our purpose to question the authority of that decision so far as it may apply to the cases now before us.

It remains to apply the law as we conceive it to be to the several cases now under consideration.

BRYAN v. *VIRGINIA.*
COOPER v. *VIRGINIA.*
McGAHEY v. *VIRGINIA.*

The head-note for these cases will be found on page 663, *ante*.

MR. JUSTICE BRADLEY continued, stating the case made in these three causes as follows:

With regard to three of these cases, *Bryan* v. *The State of Virginia*, *Cooper* v *The State of Virginia*, and *McGahey* v.

The State of Virginia, we have very little hesitation or difficulty in coming to a conclusion. They are suits brought by the Commonwealth of Virginia against the persons severally named, under the act of May 12, 1887, for the recovery of taxes due from them respectively. The proceedings in the last-named case may be described as a sample of them all. The case was instituted in the Circuit Court of Alexandria, Virginia, in the name of the Commonwealth, by the following notice:

"To John McGahey:

"Take notice that on the 23d day of March, 1888, in accordance with the statutes in such cases made and provided, I shall move the Circuit Court of Alexandria City for a judgment against you in favor of the Commonwealth of Virginia for the sum of $12.60, with interest on $6.40, part thereof, from the 15th day of December, 1886, till paid, and on $6.20, the residue, from December 15, 1887, till paid, that being the sum due by you to the said Commonwealth of Virginia for taxes, together with the penalty thereon, in payment of which papers or instruments purporting to be coupons detached from bonds of the State of Virginia have been tendered and not accepted as payment, and which taxes have not been otherwise paid due on certain real and personal property in the city of Alexandria, the said taxes being the same assessed according to law by the Commonwealth of Virginia for the years 1886 and 1887, upon the property aforesaid.

"Leonard Marbury.

"*For the Commonwealth of Virginia.*"

To this notice the defendant filed the following plea:

"For a plea in this behalf the defendant says that the plaintiff ought not to maintain its action, because he says that heretofore, viz., on the 1st day of December, 1886, and on the 1st day of December, 1887, when the taxes sued for became respectively due and payable, and prior to the commencement of this action in said city, he was willing and

ready to pay and then and there tendered and offered to pay to the plaintiff tax-receivable coupons, then due and payable, cut from bonds issued by the plaintiff under the act of the General Assembly of Virginia, approved March 30th, 1871, entitled 'An act to provide for the funding and payment of the public debt,' together with lawful money of the United States, as follows, viz.: For the said tax of $6.40, one (1) coupon, No. 23, cut from bond No. 5684, due January 1, 1883, for $3; one (1) coupon, No. 23, cut from bond No. 4213, due January 1, 1883, for $3; and forty cents (40c.) lawful money of the United States.

"And for the said tax of $6.20, one (1) coupon, No. 29, cut from bond No. 1048, due January 1, 1886, for $3; one (1) coupon, No. 28, cut from bond No. 2899, for $3, due July 1, 1885; and twenty cents (20c.) lawful money of the United States; to receive which the plaintiff then and there refused.

"And the defendant further says that always from the times when the said taxes became respectively due and payable, hitherto he has been ready and willing to pay and is still here ready and willing to pay to the plaintiff the said tax-receivable coupons and lawful money, and he now brings into court here said coupons and lawful money, ready to be paid to the plaintiff if it will accept the same; and this he is ready to verify; whereupon he prays judgment, etc."

Upon the issue thus joined a trial by jury was had and a verdict given for the Commonwealth for $13.96, and judgment entered thereon with costs. A bill of exceptions was taken at the trial, which shows that the defendant first moved to quash the notice of motion and dismiss the cause on the ground that the act of May 12, 1887, entitled "An act to provide for the recovery by motions of taxes and certain debts due the Commonwealth," etc., is repugnant to section 10, article 1 of the Constitution of the United States; which motion was overruled. The defendant, then, to maintain the issue on his part, proved that when said taxes became respectively due and payable he tendered in payment thereof to the proper collecting officer the coupons and lawful money described in and filed with his plea, which coupons on their face purported to have

been originally attached to bonds issued by the State of Virginia under the act of March 30, 1871, being then respectively due and payable, and having each upon its face the following language: "Receivable at and after maturity in payment for all taxes, debts and demands due the State," which said coupons and money the said officer refused to receive. The said coupons were then offered in evidence, and are in the form following, printed wholly from an engraved plate: "Receivable at and after maturity for all taxes, debts and demands due the State. The Commonwealth of Virginia will pay the bearer three dollars, interest due 1st January, 1883, on bond No. 4213. *George Rye*, Treasurer of the Commonwealth of Virginia." The other coupons offered were of similar form in all respects. The defendant further proved that he never owned the bonds from which the coupons were cut, and knew nothing whatever in respect to their ownership; that the coupons when purchased by him were already detached from the bonds; and that he bought them in open market as genuine coupons, and without any reason to doubt their genuineness. He further proved that prior to September 1, 1879, the State had issued bonds of the kind and in the form authorized by said act to the amount of many millions of dollars, the coupons thereon being wholly printed from engraved plates and not signed manually. He further offered to prove the denominations and numbers of the bonds issued under the act of March 30, 1871, and the act of March 28, 1879. He offered and read in evidence to the jury senate document XV, senate journal 1881–82, which contained a report of H. H. Dixon, second auditor of the Commonwealth of Virginia, directed to the president of the senate, in answer to certain questions which had been proposed to him by the senate for its information, in which report, amongst other things, the said second auditor stated: "I have the honor to report that I have no knowledge of any spurious or forged bonds or coupons issued or purporting to have been issued under either of the said acts. As to any bonds or coupons that may have been stolen I have heard of none issued under the act of March 28, 1879; nor have I any knowledge of any issued under the act of

March 30, 1871, except such information as may be contained in the report made to the legislature March 30, 1874, by the joint committee to investigate the sinking fund, in which a deficiency of $15,939.89 of bonds and of $1325.45 of interest is stated." Another report of said auditor was offered in evidence by the defendant, in which he stated as follows: "I have the honor to report that no counterfeit or forged obligations, bonds, coupons, or certificates of the State of Virginia have in any way come to my knowledge." The defendant then offered to prove by the testimony of an expert witness that the coupons issued were genuine coupons, but the court refused to receive such testimony or to allow it to go to the jury because of the act of the General Assembly approved January 21, 1886; to which ruling the defendant excepted on the ground that said act was repugnant to the Constitution of the United States. The defendant then rested, and thereupon the Commonwealth demanded of the defendant the production of the bond from which the coupons tendered purported to have been cut, with proof that said coupons were actually cut therefrom. The defendant moved the court to overrule and disallow such demand, on the ground that the act of assembly approved January 26, 1886, under which the demand was made, was repugnant to the Constitution of the United States and void. But the court overruled said motion and sustained the demand, to which the defendant excepted. The evidence being closed, the defendant prayed the court to instruct the jury that the production of the bonds from which the coupons in issue were cut, together with proof that the coupons were cut therefrom, was not necessary to establish the genuineness of the coupons, and that the act requiring this to be done is contrary to the Constitution of the United States. But the court refused this instruction, and instructed the jury that such production of bonds and proof, when demanded, was necessary to establish the genuineness of the coupons, to which ruling the defendant excepted. The defendant further prayed the court to instruct the jury that if the jury believe from the evidence that the State of Virginia issued her bonds with tax-receivable interest coupons thereto attached, which coupons

were made payable to bearer, and were printed from engraved plates and not signed manually by any officer of the State, and if they further believe that the defendant purchased the coupons filed with his plea of tender in open market, in good faith, as genuine coupons of said State, then the burden is upon the State to prove said coupons spurious, and that the act of March 12, 1887, placing upon the defendant the burden of proving them genuine is repugnant to the Constitution of the United States. This instruction was also refused by the court and the defendant excepted. The judgment in the case was removed by writ of error to the Supreme Court of Appeals of the State of Virginia, and was affirmed. The present writ of error brings this judgment before us for consideration.

Mr. Daniel H. Chamberlain and *Mr. William L. Royall* for plaintiffs in error.

Mr. R. A. Ayers, Attorney General of the State of Virginia, and *Mr. J. Randolph Tucker* for defendant in error.

The obligation to receive coupons extends only to genuine coupons. The taxpayer who has tendered coupons is bound to keep that tender good, and plead the fact, and prove it when put in issue. The question here is, has the State so altered the remedy as to impair the obligation of the contract?

While it is true, generally, that all laws in force applicable to the case at the time and place of making a contract form part of it, *Walker* v. *Whitehead*, 16 Wall. 314, 317, it is equally true that a law which only alters the remedy, but leaves one substantially equivalent, does not impair the obligation. *Antoni* v *Greenhow*, 107 U. S. 769, 774, 775.

What remedy had the taxpayer before the passage of the act under examination? The State could summarily levy upon his property for the taxes when he was driven to an action of trespass. This court had decided that any levy by an officer after tender of genuine coupons and not accepted was illegal and made the officer a trespasser. The officer became a trespasser if he levied, and was liable to the State if he accepted

coupons which turned out to be spurious, against which she had a clear right to protect herself. These treasurers in the country were not experts, and she might well distrust their judgment in receiving all which were tendered. And when tendered and refused the taxpayer retained the coupons and brought trespass in the Circuit Court of the United States and recovered back in damages the tax paid by the levy. The State paying these judgments for her officers was without tax paid either in money or coupons: and the right of the State to these coupons so tendered and taken back had been denied and none had ever been delivered by such taxpayers. It is obvious that in this state of things the same coupon might serve as a tender for many taxpayers in fraud of the rights of the State to have her taxes paid in money or in these coupons. To avoid all this — to compel the taxpayer to pay in coupons what he refused to pay in money, to verify the genuineness of the coupons tendered, and to forbear the *ex parte* procedure by levy — the statute of May 12, 1887, was passed. The constitutionality of this act was passed upon by this court in *In re Ayers*, 123 U. S. 443, 494.

The next question arises under the act of January 21, 1886, forbidding expert evidence to prove the genuineness of the coupons tendered. The right to have one's controversies determined by existing rules of evidence is not a vested right. These rules pertain to the remedies which the State provides for its citizens; and generally, in legal contemplation, they neither enter into and constitute a part of any contract nor can be regarded as being of the essence of any right which a party may seek to enforce.

Like other rules affecting the remedy, they are subject at all times to modification and control by the legislature.

These changes may lawfully be made applicable to existing causes of action. The whole subject is under the control of the legislature, which may prescribe such rules for the trial and determination, as well of existing as of future rights, as in its judgment will most completely subserve the ends of justice. As to what shall be evidence, and which party shall assume the burden of proof in civil cases, the authority of the legis-

lature is practically unrestricted so long as its regulations are impartial and uniform.

Whilst this is true, it is conceded that the legislature has no power to establish rules, which, under the pretence of regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights. Cooley's Con. Lim. 457, 458; *Ogden* v. *Saunders*, 12 Wheat. 213, 249; *Webb* v. *Den*, 17 How. 576; *Delaplaine* v. *Cook*, 7 Wisconsin, 44; *Kendall* v. *Kingston*, 5 Mass. 524; *Himmelman* v. *Carpentier*, 47 California, 42; *Rich* v. *Flanders*, 39 N. H. 304.

Tested by these principles, is the act under examination unconstitutional? Whatever may be alleged to the contrary, it clearly appears from the act that it prescribes a *general* rule of evidence, applicable alike to all cases investigated in the courts of the State, without reference as to who are the parties or what the subject matter of the controversy is. In applying it to the coupons of the State we must bear in mind that the coupons attached to bonds are not signed manually, but printed from engraved plates, capable of indefinitely multiplying the issue. The bonds are signed by the proper officer of the State, and are easily susceptible of proof as to their genuineness; but the coupons are not signed. Every coupon must, therefore, be the same, whether clipped from a bond which has actually been signed and issued, or from one which has not been signed or issued. It is manifest, therefore, that no expert testimony should be admitted in the trial of an issue as to the genuineness of a coupon, for the reason that it is impossible for him to say, in any given case, that the bond from which the coupon was clipped was ever executed and issued. The common rule, universally recognized, is that the best evidence which the nature of the case is susceptible of shall be adduced. The statute is only declaratory of this rule. This statute was under examination in a previous case by the Supreme Court of Appeals of Virginia. *Commonwealth* v. *Weller & Sons*, 82 Virginia, 623.

As to the objection against requiring the bond to be produced they are signed manually by the second auditor and treasurer of the State, and are easily susceptible of proof.

When produced, the certainty of the issue of the coupon is established, and by comparison of the coupons remaining upon the bond, an easy mode of identification is secured which is in strict compliance with the rules of the common law as interpreted by this court.

It is argued strenuously that the State, in issuing the bonds, contracted with the creditor that the taxpayer should not be required to produce the bond, and that the coupon might be proven by any other evidence which was available. When the funding act was passed, the rules of the common law were in force in Virginia, and one of its fundamental rules, as before stated, is, that the best evidence must be adduced. It is idle to say what the creditor supposed the State would do. The contract was made with reference to what she might lawfully do; and the fact that they did not consider the consequences which would result from exercise of the power reserved to require the production of the bond as the best evidence of its genuineness and the consequent genuineness of the coupon clipped from it, does not affect the lawful exercise of that power.

Mr. Justice Bradley, continuing, delivered the opinion of the court in these cases.

The question is presented to us whether the acts of assembly of the State of Virginia which required the production of the bond in order to establish the genuineness of the coupons and prohibiting expert testimony to prove the said coupons, are or are not repugnant to the Constitution of the United States. On this subject we think there can be little doubt. It is well settled by the adjudications of this court, that the obligation of a contract is impaired, in the sense of the Constitution, by any act which prevents its enforcement, or which materially abridges the remedy for enforcing it, which existed at the time it was contracted, and does not supply an alternative remedy equally adequate and efficacious. *Bronson* v. *Kinzie*, 1 How. 311; *Woodruff* v. *Trapnall*, 10 How. 190; *Furman* v. *Nichol*, 8 Wall. 44; *Walker* v. *Whitehead*, 16 Wall.

314; *Von Hoffman* v. *Quincy*, 4 Wall. 535; *Tennessee* v. *Sneed*, 96 U. S. 69; *Memphis* v. *United States*, 97 U. S. 293; *Memphis* v. *Brown*, 97 U. S. 300; *Howard* v. *Bugbee*, 24 How. 461.

We have no hesitation in saying that the duty imposed upon the taxpayer of producing the bond from which the coupons tendered by him were cut, at the time of offering the same in evidence in court, was an unreasonable condition, in many cases impossible to be performed. If enforced it would have the effect of rendering valueless all coupons which have been separated from the bonds to which they were attached, and have been sold in the open market. It would deprive them of their negotiable character. It would make them fixed appendages to the bond itself. It would be directly contrary to the meaning and intent of the act of 1871 and the corresponding act of 1879. It would be so onerous and impracticable as not only to affect, but virtually destroy, the value of the instruments in the hands of the holder who had purchased them. We think that the requirement was unconstitutional.

We also think that the prohibition of expert testimony in establishing the genuineness of coupons was in like manner unconstitutional. In the case of coupons made by impressions from metallic plates, (as these were,) no other mode of proving their genuineness is practicable; and that mode of proof is as satisfactory as the proof of handwriting by a witness acquainted with the writing of the party whose signature it purports to be. One who is expert in the inspection and examination of bank notes, engraved bonds and other instruments of that character, is able to detect almost at a glance whether an instrument is genuine or spurious, provided he has an acquaintance with the class of instruments to which his attention is directed. It is the kind of evidence resorted to in proving the genuineness of bank notes; it is the kind of evidence naturally resorted to to prove the genuineness of coupons and other instruments of that character. To prohibit it is to take from the holder of such instruments the only feasible means he has in his power to establish their validity.

In addition to these objections to the proceedings, we question very much whether the act of May 12, 1887, which authorizes and requires a suit to be brought against the taxpayer who tenders payment in coupons, as well as the other acts which require their rejection, are not themselves laws impairing the obligation of the contract. They make no discrimination between genuine and spurious coupons. A bank which should refuse to receive its bills in payment of a note due from one of its customers, but should sue him on his note, and leave him to establish the genuineness of the bills by suit against the bank, would not be regarded with much favor in a business community. It is the duty of its cashier or receiving teller to judge of the genuineness of the bills offered, and to refuse them as spurious on his peril, or rather, on the peril of the bank itself. So, in regard to these coupons, instead of relegating the taxpayer to a course of litigation, the officers of the State charged with the duty of collecting the taxes should themselves decide on the genuineness of the coupons offered. Penalties for knowingly offering spurious coupons, or using them in any way, for sale or otherwise, would probably be as effective in preventing their circulation as like penalties are in suppressing counterfeit bank bills, and other negotiable instruments.

In the case of *Bryan* v. *The State of Virginia*, the coupons that were tendered for the payment of the tax sued for purported to have been cut from bonds issued under the act of March 30, 1871, and the same obstacles to the proof of their genuineness were interposed as in the case of McGahey, by requiring the production of the bonds from which the coupons were cut, and by excluding expert testimony. The same also is true of the proceedings in the case of *Cooper* v. *The State of Virginia*.

We are of opinion, therefore, that

The judgments in these three cases must be reversed, and the records severally remanded, for the purpose of such proceedings as may be required in due course of law, according to this opinion.

ELLETT v. *VIRGINIA.*

The head-note for this case will be found on pages 663, 664, *ante.*

MR. JUSTICE BRADLEY continued, stating the case as follows:

The case of *Ellett* v. *The State of Virginia* was a suit brought to recover the amount of a judgment previously rendered against Ellett in the Circuit Court of Richmond for taxes and costs, the amount of taxes being $39.52, and the costs being $24.49. Execution having been issued upon this judgment, the defendant Ellett tendered to the sheriff, in payment thereof, coupons for the whole amount, lacking $1.49, which he tendered in lawful money. The coupons purported to be cut from a bond issued under the act of March 30, 1871, and were overdue, and each bore upon its face a contract of the State of Virginia that it should be received in payment of all taxes, debts and demands due to her. The defendant pleaded this tender and averred that the sheriff refused to receive the said coupons and money, alleging that he was forbidden to do so by the act of May 12, 1887, and that he, the defendant, has always been ready and willing since said tender to deliver said coupons and money to the sheriff in payment of said execution, and was still ready and willing to do so, and brought the same into court for that purpose. This plea was rejected by the court. A verdict was given for the plaintiff and judgment rendered thereon, which was affirmed by the Supreme Court of Appeals of the State of Virginia.

Mr. Daniel H. Chamberlain and *Mr. William L. Royall* for plaintiff in error.

Mr. R. A. Ayers, Attorney General of the State of Virginia and *Mr. J. Randolph Tucker* for defendant in error.

These fees are not payable out of the treasury, and are not recovered for the Commonwealth, but for the officer of the court. The Supreme Court of Appeals of Virginia, in the decision complained of here, said: "These fees were not for taxes, debts and demands due the Commonwealth, but were the prop-

erty of the officers of the court upon which the State had and could have no valid claim."

This court, when construing state statutes, will always adopt the construction given by state courts, if possible. *Elmendorf* v. *Taylor*, 10 Wheat. 152; *Bell* v. *Morrison*, 1 Pet. 351; *Sumner* v. *Hicks*, 2 Black, 532; *Richmond* v. *Smith*, 15 Wall. 429. The court uniformly adopts the decisions of the state tribunals in the construction of their own statutes or on questions arising out of the common law of the State. *Green* v. *Neal*, 6 Pet. 291; *Beauregard* v. *New Orleans*, 18 How. 497. It will not be contended that a state statute which provided that there should be a separate judgment in favor of the officers against the defendant for their fees in every case where there was judgment in favor of the Commonwealth under a statute which forbids payment of such fees out of the treasury, would be unconstitutional. This is exactly the effect of the decision of the state court which decides that these fees are the property of the officers, — that this is the proper construction to place upon the act of May 12, 1887, in so far as it refers to such fees.

Mr. Justice Bradley continued, delivering the opinion of the court:

The point made in this case is, that the costs included in the judgment on which the present suit was brought were not a debt due to the State of Virginia in her own right, but were due to the officers in whose favor they were taxed and whose services they were to compensate. We think that this point is untenable. The costs were recovered by the State of Virginia in the original action, to compensate her for the fees which she had to pay to the officers for their services. The demand of the officers for their costs was a demand against the State of Virginia, and not against the defendant; and by reason of this demand against her, she was entitled to recover the amount against the defendant; so that in no legal sense can it be said that the costs included in the judgment belonged to the officers and not to the State. They were recovered by

her in form, and they belonged to her, when recovered, in substance. We are of opinion, therefore, that

This judgment must also be reversed, and the record remanded for the purpose of such proceedings as may be required in due course of law, in accordance with this opinion.

CUTHBERT v. *VIRGINIA.*

The head-note in this case will be found on page 664, *ante*.

Mr. Justice Bradley, continuing, stated the case as follows:

The next case to be considered is that of *Cuthbert* v. *The State of Virginia*. This was a presentment found against Cuthbert in the hustings court of the city of Petersburg, Virginia, charging that he did, on the first day of November, 1888, and had continuously from day to day since that time, in said city, unlawfully sold and offered to sell, and unlawfully tendered and passed to divers persons, naming them, tax-receivable coupons from the bonds of the State of Virginia, without having previously obtained a special license, as required by law, authorizing him, said Cuthbert, to sell and offer to sell and to tender and pass such coupons, he, in doing the same, acting as the agent and broker for another person or persons to said jurors unknown; contrary to the act of assembly in that behalf. The presentment contained two other counts, which were abandoned. The defendant tendered a special plea in writing, to which the Commonwealth demurred, and the court sustained the demurrer. The defendant then pleaded not guilty. The jury, under the rulings of the court, found him guilty and assessed a fine of $500. On the trial the case was submitted to the jury upon an agreed statement of facts. The principal facts shown by this statement were, that on the first day of November, 1888, the defendant sold and offered to sell, and tendered and passed, and offered to tender and pass for another, as charged in the presentment, tax-receivable coupons from bonds of the State of Virginia, which were overdue and bore upon their face the contract of said State that they should be received in payment

of all taxes, debts and demands due said State from taxpayers owing taxes to the said State, and that he did not have the special license therefor required by the act of May 23, 1887, and had not paid the license tax of $1000 provided by said act for the privilege of selling the same, nor the state tax of twenty per centum upon the face value of the same; also, that the defendant Cuthbert was a member of a firm doing business in Petersburg as insurance agents, representing various foreign insurance companies, all of which had paid to the State all license taxes assessed upon them; also, that the defendant was not engaged in any business upon which a license tax is charged by the State, except the business of selling tax-receivable coupons from bonds of the State, and had not been so engaged. Upon this agreed statement of facts, the defendant moved the court to instruct the jury that the act under which the presentment was found is repugnant to section 10 of article 1 of the Constitution of the United States, and therefore void, and that they must acquit the defendant. The court refused to give this instruction, but instructed the jury that the said act is not repugnant to the Constitution, and the defendant excepted. After the verdict was rendered, the defendant moved the court to set it aside upon the same grounds, which motion was overruled. The cause was carried to the Supreme Court of Appeals, and by that court the judgment was affirmed and its decision is now here for review. The question in this case is, whether the act requiring a license tax for the sale of coupons was or was not in violation of that clause of the Constitution of the United States which relates to impairing the obligation of contracts.

Mr. Daniel H. Chamberlain and *Mr. William L. Royall* for plaintiff in error.

Mr. R. A. Ayers, Attorney General of the State of Virginia, and *Mr. J. Randolph Tucker* for defendant in error.

The only question is, whether the business of a broker in these coupons is beyond the reach of a license tax by the

State, because coupons are receivable for taxes. Does the license tax impair the obligation of the contract to receive coupons for taxes? If it does not, the judgment is right.

The power of taxation is a part of the legislative sovereignty of the State. It existed when the bonds and coupons were issued, they having, in fact, been issued subject to this power of taxation, which was not in any way released or surrendered by their issuance, and being the *lex temporis*, is part and parcel of the bond and coupon contract. If this power of taxation was not expressly reserved, it matters not. For it need not be reserved; it exists and remains always, unless yielded up. See Cooley on Taxation, 54, note 2.

Then, what though the tax imposed on the business of selling the coupons be a tax on the coupons themselves. The State is entitled to tax all persons, property and business, within its jurisdiction. The business is done, or proposed to be done here, within the jurisdiction of the State; and that business is a legitimate subject of taxation. How, then, can it be said that the statute of 1883–4, which imposes a tax on the doing of the business of selling the coupons, is beyond the limits of the constitutional legislative powers of the State and void?

Mr. Justice Bradley, continuing, delivered the opinion of the court in this case.

It is manifest from the terms of the act of 1871, as well as that of 1879, under which tax-receivable coupons were authorized to be and were issued, that said coupons were intended to circulate from hand to hand, being expressly made payable to bearer, and being made receivable for taxes, debts, dues and demands due to the State. Any undue restraint upon the free negotiability of these instruments, therefore, would be a violation of the clear understanding and agreement of the parties. That the license required by the 65th section of the tax act of March 15, 1884, as amended by the act of May 23, 1887, was a very material interference with such negotiability, is most manifest. If sustained as a valid act of legislation, and carried

into effect, it would prevent the negotiation of such coupons by any holder thereof. The enormous license fee of one thousand dollars in towns of more than ten thousand inhabitants and of five hundred dollars in other counties and towns, with the exception of twenty per cent of the face value on every coupon sold, was absolutely prohibitory in its effect. A material quality of the coupons — their negotiability — was thereby destroyed. The point cannot be made any clearer by argument than it appears by the mere statement of it. This follows whether the law is construed as applicable to the sale by a coupon-holder of his own coupons, or to the sale or passing by any person of coupons for another. An owner of coupons residing in New York or London, under the operation of the law, if the coupons were not paid by the State when they became due, would be obliged to go in person to Virginia in order to dispose of them to those who might be able and willing to use them in the payment of taxes.

The judgment in this case must also be reversed, and the record remanded for the purpose of such proceedings to be had as law and justice may require in accordance with this opinion.

IN RE BROWN.

The head-note to this case will be found on page 664, *ante*.

Mr. Justice Bradley, continuing, stated the case as follows:

The next case to be considered is that of *Ex parte Brown*, which was an application of the petitioner, Brown, to the Circuit Court of the United States for the Eastern District of Virginia, to be discharged from imprisonment in the custody of R. A. Carter, the sergeant of said city and *ex officio* jailer thereof. The petition sets forth that the petitioner was sentenced by the hustings court of the city of Richmond to pay a fine of $25.00 and costs, amounting to $26.70, and to remain in the jail of the said city until the same should be paid, in the custody of the said sergeant; that on the 3d of July, 1889, he tendered W. P. Lawton, clerk of the hustings court, in pay-

ment of said fine, eighteen dollars in coupons and $8.70 in lawful money of the United States; that each of said coupons was cut from a bond issued by the State of Virginia under the act of March 30, 1871, and was overdue, and bore upon its face the contract of the State that it should be receivable in payment of all taxes, etc.; that the clerk refused to receive said coupons and money in payment of said fine and costs, because certain acts of the General Assembly of Virginia forbade him so to receive them; that thereafter, on the same day, he tendered the same coupons and current money to Carter, sergeant as aforesaid, and demanded his release from custody; that said sergeant also refused to receive said coupons and money in payment of said fine and costs, and he refused the same because the coupons so tendered by the petitioner became due prior to the 1st day of July, 1888, and because section 415 of the Code of Virginia of 1887 prohibits the receipt of any coupons of said State which became due prior to July 1st, 1888, as those tendered did; that said section 415 is repugnant to the Constitution of the United States; and that the petitioner is therefore detained in said jail and in custody of said sergeant in violation of the said Constitution. The petitioner therefore prayed a *habeas corpus* to be directed to the said Carter, sergeant as aforesaid, and that he be discharged from custody. The writ being issued, Carter made return thereto in substance as follows: He annexed to said return a copy of the judgment and order of the hustings court of Richmond committing the petitioner to the jail of the city until he should pay a certain fine imposed upon him, as stated in the petition. He admitted that on the 3d of July, 1889, the petitioner tendered the coupons and money set out and described in his petition, to the clerk, Lawton, who refused to receive the same; and that on the 3d of July, 1889, the petitioner tendered to him, Carter, $8.70 in current money of the United States, and eighteen dollars in coupons purporting to be detached from bonds of the State of Virginia; but he denied that they were genuine coupons legally receivable. He further stated in his return that, by section 415 of the Code of Virginia of 1887, it is provided that no petition shall

be filed or other proceeding had to try whether any paper printed, written, engraved or lithographed, purporting to be a coupon detached from any bond of said State, is a genuine coupon legally receivable for taxes, debts or demands of the said State, where said coupon became due prior to July 1, 1888, unless said petition was filed or proceeding had within one year from July 1, 1888; and he charged the fact to be that the coupon held by the petitioner became due prior to July 1, 1888. The court below refused to discharge the prisoner, holding that section 415 of the Code of 1887 is not repugnant to the Constitution of the United States. The petitioner thereupon appealed to this court, and the question is as to the constitutionality of the section referred to.

We have already set forth the provisions of this law in a former part of this opinion, it being the act passed February 27, 1886, and afterwards incorporated into the Code of 1887, as section 415. Under the operation of this act, after the 1st day of July, 1889, of course, all coupons that were then more than a year past due were absolutely precluded from being used in payment of dues to the State, as provided for in the act of 1871. Considering the obstacles which had been interposed in the way of their use for that purpose, it is not difficult to imagine that a very large proportion of the coupons attached to the bonds of 1871 had not been presented, or, if presented, had not been received for taxes prior to the date referred to.

Mr. Daniel H. Chamberlain and *Mr. William L. Royall*, for plaintiff in error.

Mr. R. A. Ayers, Attorney General of the State of Virginia, and *Mr. J. Randolph Tucker* for defendant in error.

The real question involved and intended to be raised in the record is the constitutionality of section 415 of the Code of Virginia. The act which was incorporated into the Code, forming the said section, was approved February 26th, 1886 — more than three years before the tender in the present case.

The coupon holder was warned in advance that from and

after July 1, 1888, he would only have one year within which to institute proceedings to have his coupons declared genuine and received for taxes or other debts or demands due the Commonwealth. The statutes deprive the coupon holder of no right which he enjoys under his contract. His coupon, if genuine, is received in a proper proceeding to enforce its payment. The courts of the State are open for the prosecution of his claim. If the State does not pay his interest coupons at maturity, he may institute suit and recover judgment against her so as to prevent the bar of the statute of limitation. Chapter 32 of the Code of Virginia continues in force statutes which have been upon the books for more than fifty years, under which any claimant may sue the State in the Circuit Court of the city of Richmond, and have the validity of his claim adjudicated. This is in addition to the other modes provided by which he may have the genuineness of his claim established.

This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect; and it is difficult to see why if the legislature may prescribe a limitation where none existed before, it may not change one which has already been established. The parties to a contract have no more a vested interest in a particular limitation which has been fixed than they have in an unrestricted right to sue. *Terry* v. *Anderson*, 95 U. S. 628; *Hawkins* v. *Barney*, 5 Pet. 457; *Bronson* v. *Kinzie*, 1 How. 311; *Christmas* v. *Russell*, 5 Wall. 290; *Jackson* v. *Lamphire*, 3 Pet. 280; *Sohn* v. *Waterson*, 17 Wall. 596. There has always been a statute of limitation in favor of the Commonwealth in Virginia. See section 751, Code, edition 1887; *Idem*, section 770; *Idem*, section 3432. The period within which suits are required to be instituted or claims presented has been shortened, but ample time is given by the statute under examination, within which to prosecute the claim. Cooley's Const. Lim. p. 365.

Mr. Justice Bradley, continuing, delivered the opinion of the court.

The passage of a new statute of limitations, giving a shorter time for the bringing of actions than existed before, even as applied to actions which had accrued, does not necessarily affect the remedy to such an extent as to impair the obligation of the contract within the meaning of the Constitution, provided a reasonable time is given for the bringing of such actions. This subject has been considered in a number of cases by this court, particularly in *Terry* v. *Anderson*, 95 U. S. 628, 632, and *Koshkonong* v. *Burton*, 104 U. S. 668, 675, where the prior cases are referred to. In *Terry* v. *Anderson*, Chief Justice Waite, speaking for the court, said: "This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. *Hawkins* v. *Barney*, 5 Pet. 457; *Jackson* v. *Lamphire*, 3 Pet. 280; *Sohn* v. *Waterson*, 17 Wall. 596; *Christmas* v. *Russell*, 5 Wall. 290; *Sturges* v. *Crowninshield*, 4 Wheat. 122. It is difficult to see why, if the legislature may prescribe a limitation where none existed before, it may not change one which has already been established. The parties to a contract have no more a vested interest in a particular limitation which has been fixed than they have in an unrestricted right to sue. . . . In all such cases the question is one of reasonableness, and we have, therefore, only to consider whether the time allowed in this statute is, under all the circumstances, reasonable. Of that the legislature is primarily the judge; and we cannot overrule the decision of that department of the government unless a palpable error has been committed."

The court in that case held that the period of nine months and seventeen days given to sue upon a cause of action which had already been running nearly four years, was not unconstitutional. The liability in question was that of a stockholder under an act of incorporation for the ultimate redemption of the bills of a bank which had become insolvent by the disaster of the civil war. The legislature of Georgia, on the 16th of March, 1869, passed a statute requiring all actions against stockholders in such cases to be brought by or before the 1st of January, 1870.

In the case of *Koshkonong* v. *Burton*, the suit was brought upon bonds of the town of Koshkonong issued January 1, 1857, with interest coupons attached. The coupons matured at different dates from 1858 to 1877. The action was brought on the 12th of May, 1880, and the question was whether the action as to the coupons maturing more than six years before the commencement of the suit was barred by the statute of limitations of Wisconsin. In March, 1872, an act was passed to limit the time for the commencement of actions against towns, counties, cities and villages, on demands payable to bearer. It provided that no action brought to recover money on any bond, coupon, interest warrant, agreement or promise in writing made by any town, county, city or village, or upon any instalment of the principal or interest thereof, shall be maintained unless the action be commenced within six years from the time when such money has or shall become due, when the same has been made payable to bearer or to some person or bearer, or to the order of some person, or to some person or his order; provided, that any such action may be brought within one year after this act shall take effect. This court, speaking by Mr. Justice Harlan, said: "It was undoubtedly within the Constitutional power of the legislature to require, as to existing causes of action, that suits for their enforcement should be barred unless brought within a period less than that prescribed at the time the contract was made or the liability incurred from which the cause of action arose. The exertion of this power is, of course, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of an action before the bar takes effect. Whether the first proviso in the act of 1872, as to some causes of action, especially in its application to citizens of other States holding negotiable municipal securities, is, or not, in violation of that condition, is a question of too much practical importance and delicacy to justify us in considering it unless its determination be essential to the disposition of the case in hand; and we think it is not." The case was decided without determining the question referred to.

A question of the same nature frequently arises upon statutes which require the registry of conveyances and other instruments within a limited period prescribed, and making them void, either absolutely or in their operation as against third persons, if not recorded within such time. Such laws, as applied to conveyances and other instruments in existence at the time of their passage, are, of course, retrospective in their character, and may operate very oppressively if a reasonable time be not given for the registry required. This subject was discussed in the case of *Vance* v. *Vance*, 108 U. S. 514, Mr. Justice Miller delivering the opinion of the court, where the prior cases were adverted to and commented upon. The same rule applies in those cases as in reference to statutes of limitation, namely, that the time given for the act to be done must be a reasonable time, otherwise it would be unconstitutional and void.

It is evident from this statement of the question that no one rule as to the length of time which will be deemed reasonable can be laid down for the government of all cases alike. Different circumstances will often require a different rule. What would be reasonable in one class of cases would be entirely unreasonable in another.

It is necessary, therefore, to look at the nature and circumstances of the case before us, and of the class of cases to which it belongs. The primary obligation of the State with regard to the coupons attached to the bonds issued under the act of 1871 was to pay them when they became due; but if they were not paid at maturity the alternative right was given to the holder of them to use them in the payment of taxes, debts, dues and demands due to the State. The very nature of the case shows that such an application of the coupons could not be made immediately or in any very short period of time. If all the bonds were of the denomination of one thousand dollars each, it would require twenty thousand of them to make up the funded debt of twenty millions of dollars. These twenty thousand bonds would be likely to be scattered and dispersed through many States and countries, and it would be impracticable for the holders of them to use the coupons

which the State should fail to pay in cash, in the alternative manner stipulated for in the contract, unless they had a reasonable time to dispose of them to taxpayers. No limitation of time was fixed by the act within which the coupons should be presented or tendered in payment of taxes or other demands. The presumption would naturally be that they could be used within an indefinite period, like bank bills. Under this condition of things, a statute of limitations giving to the holders thereof but a single year for the presentation in payment of taxes of the coupons then in their possession, perhaps never severed from the bonds to which they were attached, and comprising all the coupons which had been originally attached thereto, seems, even at first blush, to be unreasonable and oppressive. Probably not one-tenth, if even so large a proportion, of the bondholders were taxpayers of the State of Virginia. The only way in which they could, within the year prescribed, utilize their coupons, the accumulation perhaps of years, would be to sell and dispose of them to the taxpayers. How this could be done, especially in view of the onerous laws which were passed with regard to the sale of coupons in the State, it is difficult to see. Under all the circumstances of the case, and the peculiar condition of the securities in question, we are compelled to say that in our opinion the law is an unreasonable law and that it does materially impair the obligation of the contract.

We have spoken of the act as limiting, indifferently, the time of tendering the coupons, and the time of commencing proceedings to ascertain their genuineness. Its terms relate only to the latter; and as this proceeding cannot be instituted until the coupons have been tendered, the effect is, to make a tender necessary before the expiration of one year, which can often be done only within a few days, or even hours; since the taxes may become due in that short period, and not become due again until a year afterwards. This puts the unconstitutionality of the act beyond question.

Without further discussion of the subject, we conclude that

The judgment of the Circuit Court must be reversed, and the same is reversed accordingly, and the cause remanded for the purpose of such proceedings as may be required by law and justice in conformity with this opinion.

HUCLESS v. *CHILDREY.*

The head-note for this case will be found on page 664, *ante*.

MR. JUSTICE BRADLEY, continuing, stated the case as follows:

The next case which we shall consider is that of *Hucless* v. *Childrey*, which was an action of trespass on the case, brought in the Circuit Court of the United States for the Eastern District of Virginia, by Hucless, a citizen of the State of Virginia, residing in Richmond, against Childrey, the treasurer of Richmond, and, as such, collector of taxes and license taxes due to the State, to recover damages for the refusal of the said Childrey to receive tax-receivable coupons in payment or part payment of a license tax payable for a license to sell by retail wine, spirits and other intoxicating liquors, whereby the plaintiff was prevented from pursuing the said business (which was a lawful business), and sustained damage by reason thereof to the extent of six thousand dollars. The declaration stated in substance that the plaintiff desired and intended to open and conduct the business aforesaid at 405 West Leigh Street, in said city of Richmond, for one year from the first of May, 1889; that he was a fit person, and intended to keep an orderly house, and that the place was suitable, convenient and appropriate for that purpose; that by the statute law of Virginia a person desiring and intending to conduct such business must apply to the commissioner of revenue for the city on county for a license therefor, who shall ascertain the amount to be paid and give the applicant a certificate specifying the same, and such person shall make a deposit therefor with the treasurer or collecting officer of the city or county, of the amount so ascertained, and shall take from him a receipt for such deposit endorsed on the certificate, or otherwise, he shall deposit with the treasurer the amount of tax assessed by law

for the license tax on said business. Thereupon he shall make application in writing for a license for such business to the commissioner of the revenue for such city or county, accompanied by said certificate, and the person so desiring to conduct said business is forbidden by said statutes to conduct the same until he has appeared before the judge of the corporation or county court, and has proved that he has made such deposit and is a fit person to conduct such business, etc.; that the license tax imposed by the laws of Virginia to be paid for the business of selling, by retail, for one year, wine, ardent spirits, malt liquors or any of them, in cities of more than one thousand inhabitants, is $125; that on the 3d of May, 1889, plaintiff applied to the commissioner of revenue of Richmond to ascertain the amount to be paid by him as his license tax for selling by retail as aforesaid, and the commissioner gave to him a certificate specifying the same as $125; that on the same day the plaintiff presented said certificate to Childrey, the defendant, treasurer, as aforesaid, and tendered to him, in payment of said license tax, $123 in coupons and two dollars in lawful money, and demanded a receipt stating that he had deposited with him $125 in said coupons and money; that Childrey refused to receive said coupons and money, and refused to give plaintiff said receipt; that each of said coupons was cut from a bond issued by the State of Virginia under the act of March 30, 1871, and each bore upon its face the contract of the State that it would be received in payment of all taxes, debts, dues and demands due to the State; that thereafter, on the 3d day of May, 1889, the plaintiff stated to said Childrey that he desired and intended to conduct the business aforesaid at 405 West Leigh Street, and then tendered to him in payment of the license tax due to the State on said business for one year $123 in coupons and $2.75 in lawful money, and demanded of him a certificate of such deposit, but Childrey refused to receive said coupons and money, and refused to give such certificate, and refused to receive said coupons and money in both cases, because sections 399, 536 and 538 of the Code of Virginia of 1887 forbade him to receive them; and the plaintiff averred that said sections are repugnant to section 10,

article 1 of the Constitution of the United States, which the said Childrey well knew; that he, Childrey, obeyed the command of said sections and declined to follow the mandate of the Constitution; that by force of the statute law of Virginia the plaintiff would have been liable to indictment and severe penalties if he had proceeded to open and conduct his said business before he had satisfied the judge of the corporation or the hustings court of the city of Richmond that he was a fit person to conduct said business, that he would keep an orderly house and that the place was a suitable one; and that the plaintiff could not apply to said court to enter on said inquiries until he presented to said court a receipt from said Childrey for said deposit endorsed on the certificate furnished by the commissioner of the revenue, or the certificate of the commissioner endorsed on the receipt of said Childrey.

To this declaration the defendant filed a demurrer, which was sustained by the Circuit Court and judgment rendered for the defendant, which judgment is brought here for review.

Mr. William L. Royall for plaintiff in error.

It is freely conceded that the State may, in her discretion, absolutely abolish the sale of spirituous liquors or prescribe on what terms they shall be sold. That is part of the police power intended for the protection of society. But the State of Virginia does not prohibit its sale. She encourages its sale. She evidently thinks the sale of liquor a practice beneficial to the health and morals of her citizens, and she endeavors to extract from its sale all the revenue that the business will bear.

Whilst she may do what she pleases looking to a regulation of its sale, yet, when she undertakes to raise revenue from its sale, that revenue is as much payable in her coupons as any other revenue, as they are to be received in payment of "all taxes, debts, demands and dues due the State."

Mr. R. A. Ayers, Attorney General of the State of Virginia, and *Mr. J. Randolph Tucker* for defendant in error.

MR. JUSTICE BRADLEY, continuing, delivered the opinion of the court.

The law under which the treasurer justified his action in refusing to receive the coupons tendered by the plaintiff is set forth in the declaration with sufficient accuracy and fulness for the disposal of the case, except that it should be added that the license fee to be deposited with the treasurer was required to be in lawful money of the United States as a condition precedent to the granting of the license.

We are of opinion that the requirement that the license fee shall be paid in lawful money of the United States does not, as contended, impair the obligation of the contract made by the State with the holders of the coupons referred to. Licenses for the sale of intoxicating liquors are not only imposed for the purpose of raising revenue, but also for the purpose of regulating the traffic and consumption of these articles, and hence the State may impose such conditions for conducting said traffic as it may deem most for the public good. Instead of a license fee of $125 it might have imposed a license fee of $250, or any other amount, or it might have prohibited the sale of intoxicating liquors altogether, as is admitted by the counsel for the plaintiff in their brief. They concede that the State might, in her discretion, absolutely abolish the sale of spirituous liquors, or prescribe on what terms they shall be sold. In this view, there does not seem to be any violation of the obligation of the State in requiring the tax which is imposed to be paid in any manner whatever — in gold, in silver, in bank notes or in diamonds. The manner of payment is part of the condition of the license intended as a regulation of the traffic. It would be very different if the business sought to be followed was one of the ordinary pursuits of life, in which all persons are entitled to engage. License taxes imposed upon such pursuits and professions are imposed purely for the purpose of revenue, and not for the purpose of regulating the traffic or the pursuit. For these considerations we are clearly of opinion that

The judgment of the Circuit Court was right, and it is, therefore, affirmed.

VASHON v. *GREENHOW.*

The head-note for this case will be found on page 664, *ante.*

MR. JUSTICE BRADLEY, continuing, stated the case as follows:

The remaining case which we have to consider is that of *Vashon* v. *Greenhow.* This case arose upon the refusal of Greenhow, treasurer of the city of Richmond, to receive from Vashon tax-receivable coupons in payment, or part payment, of taxes due from him, including a certain amount due for school taxes for the maintenance of the public free schools of the State. Upon this refusal Vashon filed a petition for a mandamus in the hustings court of the city of Richmond, stating that he was a taxpayer of the said city, and was indebted to the State for state taxes of 1884 to the amount of $35.63, and tendered to Greenhow, the said treasurer, in payment therefor, certain coupons cut from the bonds of the State issued under the act of March 30, 1871 — one of the denomination of thirty dollars and one of the denomination of three dollars, said coupons being past due, and being presented to the court with the petition; that he, at the same time, offered to pay the treasurer the whole of said tax in legal-tender notes and coin, and demanded that the treasurer receive said coupons along with said legal-tender notes and coin for the purpose of identification and verification in manner and form as required by the act of January 14, 1882. The petition further alleged that by virtue of the State's contract to receive said coupons in payment of said taxes, and by virtue of the act of assembly aforesaid, he was entitled, upon the payment of his said tax in money, to have his said coupons received for identification and verification, and pay his tax therewith; wherefore he prayed a writ of mandamus commanding said Greenhow, treasurer of said city, to receive the said money and also the said coupons, and commanding him to forward said coupons to the court for identification and verification according to law. A rule to show cause having been granted, the treasurer filed his answer to the petition, in which he stated the truth to be that Vashon was indebted to the State for taxes for the

year 1884, as follows, to wit: for tax on property the sum of $35.63, being $9.66 for the maintenance of public free schools, as per exhibit attached to the answer. He further stated and admitted that the petitioner offered to pay the said tax in money at the same time that he demanded the respondent to receive the coupons mentioned in the petition for the purpose of identification and verification. The answer then proceeds as follows:

"Your respondent avers that he was willing to receive the payment of said tax in money, but refused to receive and receipt for so much of the coupons as were offered in payment of that portion of the tax set aside by law and dedicated to the maintenance of the public free schools of the State.

"Your respondent assigns the following reasons for such refusal:

"(1) The Constitution of Virginia provides, in section 7 of article VIII, what specific sums shall be set apart as a permanent and perpetual literary fund, and includes in it such other sums as the General Assembly may appropriate.

"(2) Section 8 of the same article provides that the General Assembly shall apply the annual interest on the literary fund and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar, for the benefit of the public free schools.

"(3) In pursuance of this constitutional authority the General Assembly has provided, in acts of 1883–4, p. 561, that on tracts of lands and lots a tax of ten cents on every hundred dollars of the assessed value thereof shall be levied, which shall be applied to the support of the public free schools of the State.

"(4) Again, the last General Assembly, in acts of 1883–4, p. 603, have provided that all taxes assessed on property, real or personal, and dedicated to the maintenance of the public free schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free school fund, and shall be used for no other purpose whatsoever.

"Your respondent avers that to have forwarded such of the

coupons as were offered in payment of the tax dedicated to the public free schools would have been a violation of the Constitution and the laws above referred to.

"For these reasons your respondent insists that he ought not to have forwarded, for the purpose of identification and verification, so much of the coupons as were tendered in payment of that portion of the tax dedicated to the public free schools.

"He therefore prays that the writ of mandamus may be denied and the petition dismissed with costs."

To this answer the petitioner entered a demurrer, which was sustained by the court and a peremptory mandamus was awarded pursuant to the prayer of the petition. The case being carried to the Supreme Court of Appeals of Virginia the judgment was reversed, and this judgment of reversal is now before us for review.

Mr. William L. Royall for plaintiff in error.

The question to be determined is, which will this court follow — the series of decisions of the old court, holding the funding act to be consistent with the Constitution of the State, or the decision of the new court, holding that act to be void, as being in conflict with the Constitution of the State.

If the act is consistent with the Constitution of the State, then the act of March 15, 1884, which forbids payment of part of the tax in coupons, clearly impairs the obligation of the State's contract that they shall be received in payment of all taxes due to the State. It is the settled and familiar law of this court that when the question is whether a state law authorizing an issue of bonds is repugnant to the Constitution of that State, and there have been conflicting decisions of the highest court of that State, this court will follow the first decision of that State's court on that question, instead of the last. *Gelpcke* v. *Dubuque*, 1 Wall. 175 *Kenosha* v. *Lamson*, 9 Wall. 477; *Lee County* v. *Rogers*, 7 Wall. 181; *Havemeyer* v. *Iowa County*, 3 Wall. 294; *Mitchell* v. *Burlington*, 4 Wall. 270; *Olcott* v. *Supervisors*, 16 Wall. 678; *Taylor* v. *Ypsilanti*, 105 U. S. 60.

It is also the settled and familiar law of this court that when the question to be determined is whether a state statute, making a contract, is repugnant to the Constitution of that State, this court will determine that question for itself, without regard to what the highest court of that State may have decided in regard to it. *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436; *University* v. *People*, 99 U. S. 309.

Now, it is hardly possible for this court, after the many times it has held these coupons to be binding contracts, to hold now that they are void. I suppose, as a matter of course, that it will adopt the reasoning of Virginia's court in *Antoni* v. *Wright*, 22 Grattan, 833; and *Clarke* v. *Tyler*, 30 Grattan, 134; and I shall therefore discuss the matter no further.

Mr. R. A. Ayers, Attorney General of the State of Virginia, and *Mr. J. Randolph Tucker* for defendant in error.

Mr. Justice Bradley, continuing, delivered the opinion of the court.

The Court of Appeals placed their judgment upon two distinct grounds. In the first place, they reviewed the former judgments of that court which had sustained the act of March 30, 1871, as a valid and constitutional enactment and binding upon the State as a contract with the bond and coupon holders under the same. The court were of opinion that these decisions were based upon a mistaken assumption that the State had received a consideration for the issuing of the bonds created by the act aforesaid. They argued and attempted to show that the State had not received any consideration whatever, but that the issuing of the bonds under the act of 1871 was a mere gratuity on the part of the State, and was not binding upon it so as to prevent the legislature from abrogating the conditions of that act. We have already indicated our views with regard to this position taken by the Supreme Court of Appeals, and have referred to the decisions made by this court sustaining the validity of the act of 1871, which decisions of this court we regard as binding upon us.

The other ground on which the Court of Appeals placed its decision was, that the act of 1871, as applied to the moneys due and payable to the "literary fund," or fund for the maintenance of public free schools, was contrary to the constitution of the State, adopted in 1869. The 7th and 8th sections of the eighth article of that constitution declare as follows:

"SEC. 7. The General Assembly shall set apart, as a permanent and perpetual literary fund the present literary funds of the State, the proceeds of all public lands donated by Congress for public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the State by forfeitures, and all fines collected for offences committed against the State, and such other sums as the General Assembly may appropriate.

"SEC. 8. The General Assembly shall apply the annual interest on the literary fund, the capitation tax provided for by this constitution for public free school purposes, and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar, for the equal benefit of all the people of the State. . . ." 2 Constitution and Charters, 1968.

The court, in its opinion, held that in view of these constitutional provisions the legislature had no power to declare, or contract, that the moneys due to the literary fund might be paid in coupons attached to the bonds authorized by the act of 1871; and that such a payment would be repugnant to the very nature of the fund. It might well be added, that coupons thus paid into the fund would be of no value whatever to it, for as soon as paid into the treasury they would become valueless as if cancelled and destroyed, unless some provision were made for their reissue, and the putting of them into renewed circulation. This would be opposed to the whole tenor of the act, would be unjust to the coupon holders themselves, and would probably be contrary to the acts of Congress in reference to the creation of paper currency. We think that the position of the Court of Appeals in this case is well taken, that coupons could not be made receivable as a portion of the literary fund; and that, if they could not be received as a part

of the fund, they could not properly be made receivable for the taxes laid for the purpose of maintaining said fund. For several years after the constitution was adopted, and after the law of 1871 had been passed, the taxes for the benefit of free schools were mingled in the assessment and collection of taxes, and in the treasury when received, with the other taxes and funds raised for the support of the state government. As long as this state of things continued the collecting officers could not object to receiving coupons in payment of taxes, because the share due to the school fund could easily be paid from the treasury, to the credit of that fund, out of the lawful moneys received. But by the tax act of March 15, 1884, it was provided that all taxes assessed on property, real or personal, by that act, and dedicated by it to the maintenance of the public free schools of the State, should be paid and collected only in the lawful money of the United States, and should be paid into the treasury to the credit of the free school fund, and should be used for no other purpose whatsoever, and to this end the auditor of public accounts should have the books of the commissioner of the revenue prepared with reference to the separate assessment and collection of said school tax, and the several treasurers of the Commonwealth should have the tax bills in their counties and corporations so made out as to specify the amount of the tax due from each taxpayer to the public free school fund, including the capitation taxes of whatever kind or nature, and should keep said capitation tax and school tax separate and distinct from all other taxes or revenues so collected by him, and forward the same, thus separate and distinct, to the auditor of public accounts, which should be kept separate and distinct by him from all other taxes or revenues until paid to the public free schools. Since the passage of this act, and in pursuance thereof, the taxes and other revenues raised for the purpose of maintaining public schools, and belonging under the Constitution to the literary fund, have been kept separate and distinct from the other taxes raised for the general support of the state government. This the practice when the case of *Vashon* v. *Greenhow* arose, and in our judgment the law requiring the school tax to be

paid in lawful money of the United States was a valid law, notwithstanding the provisions of the act of 1871; and that it was sustained by the sections of the Constitution referred to, which antedate the law of 1871, and override any provisions therein which are repugnant thereto.

In *Paup* v. *Drew*, 10 How. 218, a decision was made by this court in a case not very different in principle from the one now under consideration. It had been decided in *Woodruff* v. *Trapnall*, 10 How. 190, at about the same time, that the law of Arkansas which chartered the Bank of the State of Arkansas, (the whole capital of which belonged to the State,) and provided that the bills and notes of said institution should be received in all payments of debts due to the State, was valid and irrepealable, and that, although this provision was subsequently in terms repealed, the notes of the bank which were in circulation at the time of the repeal were not affected by it; and that the undertaking of the State to receive the notes of the bank constituted a contract between the State and the holders of these notes which the State was not at liberty to break or impair, although notes issued by the bank after the repeal were not within the contract and might be refused. After this decision the case of *Paup* v. *Drew* came up, in which it was held that, although the notes of the bank were receivable in payment of all debts due to the State in its own right, and could not be refused, yet where the State sold lands which were held by it in trust for the benefit of a seminary, and the terms of the sale were that the debtor should pay in specie or its equivalent, such debtor was not at liberty to tender the notes of the bank in payment. The question arose in this way: Congress in 1827 had passed an act "Concerning a seminary of learning in the Territory of Arkansas," by which two entire townships of land were directed to be set aside and reserved from sale, out of the public lands within the said territory, for the use and support of a university within the said territory. In 1836, Congress passed another act entitled "An act supplementary to the act entitled 'An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United

States within the same, and for other purposes,'" by which last act the lands so reserved for the use and support of a university were vested in the State of Arkansas. On the 28th of December, 1840, the legislature of Arkansas passed an act entitled "An act to authorize the governor to dispose of the seminary lands;" and in 1842 the then governor of the State sold to John W. Paup the right to enter and locate 640 acres of said land, and received from him therefor bonds payable at different dates in specie or its equivalent. In 1847 the governor of the State brought a suit upon these bonds, and the defendants brought into court the sum of $6050 in notes of the Bank of the State of Arkansas, and pleaded a tender of the same in discharge of the debt. The plaintiff demurred on the ground that the proceeds of the bonds were part of a trust fund committed to the State by Congress for special purposes, over which the State had no power except to collect and disburse the same in pursuance of the objects of the grant, and the State had no power to apply said funds to the payment of ordinary liabilities, and was not bound to accept in payment of such bonds any depreciated bills, bank paper, or issues, even though she might be ultimately liable to redeem them. This demurrer was sustained and judgment given that the fund was a trust fund held by the State of Arkansas for the purposes to which it was devoted, and therefore the State could not properly contract to receive other than lawful money for property disposed of belonging to said fund.

We think that the principle of this case sustains the decision of the Court of Appeals of Virginia in the case now under consideration, and the judgment of that court is

Affirmed.

It may be argued that the principle involved in the last case is equally applicable to all taxes raised for the support of the state government, inasmuch as the funds necessary for that purpose, as well as those raised for the purpose of maintaining public free schools, are required to be paid in cash. But there is this difference, that the tax for school purposes is set apart for that specific use, under the express requirement of the consti-

tution, whilst the general tax for carrying on the government is, or should be, adequate to meet not only the actual expenses of the government itself, but also the outstanding debts and obligations that may be due and payable during the fiscal year, of which the coupons are themselves a part. If the tender of tax-receiving coupons to any considerable amount is apprehended, the rate of taxation should be raised so as to produce a sufficient surplus over and above such coupons to meet the expenses of the government. If the influx of coupons should be so uncertain that no safe calculation could be made on the subject, an arrangement could probably be made with the coupon holders, for limiting the proportion of tax which would be received in coupons. It is certainly to be wished that some arrangement may be adopted which will be satisfactory to all the parties concerned, and relieve the courts as well as the Commonwealth of Virginia, whose name and history recall so many interesting associations, from all further exhibitions of a controversy that has become a vexation and a regret.